

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IRAIS FUENTES,)	
)	
Plaintiff,)	Case No. 08 C 1075
)	
v.)	Judge Joan B. Gotschall
)	
)	Magistrate Judge Denlow
LAW OFFICES OF IRA T. NEVEL and)	
IRA T. NEVEL, INDIVIDUALLY)	
)	JURY TRIAL DEMANDED
Defendant.)	

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
PURSUANT TO RULE 55(b)(1)

Plaintiff, Irais Fuentes ("Mrs. Fuentes") motions this Court under Federal Rule of Civil Procedure 55(b)(1) to enter default judgment against Defendants Law Offices of Ira T. Nevel and Ira T. Nevel together with a judgment for the amount and costs requested in the Complaint for failure to appear.

In support of this Motion, Mrs. Fuentes states:

INTRODUCTION

On February 21, 2008 Mrs. Fuentes filed this action seeking redress against unlawful credit and collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, ("FDCPA") engaged in by Ira Nevel and the Law Offices of Ira T. Nevel in attempting to collect on a mortgage through foreclosure proceedings when their client did not have rights to the debt at that time. Defendants threatened that nonpayment of her debt would result in the sale of her property, even though sale of her property would not be lawful under the circumstances.

FACTS RELEVANT TO PLAINTIFF'S MOTION

Mrs. Fuentes filed her Complaint on February 21, 2008. Shortly thereafter, Plaintiff sent the waiver of service of summons via regular U.S. Mail in compliance with Fed. R. Civ. P. 4(d)(1)(A)-(G) to Mr. Nevel and Law Offices of Ira T. Nevel.

On March 10, 2008, this Court scheduled this case for status on April 30, 2008 at 9:30 a.m. and ordered Mrs. Fuentes to advise Defendants of the status hearing. On March 12, 2008, Mrs. Fuentes sent this order to Defendants along with a cover letter informing the Defendants that they still must appear in Court even if they have not answered and that if they do not complete the waiver of service, Mrs. Fuentes would proceed with service by formal means. (Exhibit 1). Defendants did not respond to Mrs. Fuentes' letter and, as a result, Mrs. Fuentes arranged for Defendants to be personally served pursuant to Fed. R. Civ. P. 4(a)(1)(A)-(G). Defendants were served on April 17, 2008. (Exhibit 2 and Exhibit 3).

Defendants did not appear in Court at the status hearing on April 30, 2008. Defendants had until May 7, 2008 to file an appearance and any responsive pleading. Fed. R. Civ. P. 12(a)(1)(A)(i).

ARGUMENT

Mrs. Fuentes filed a claim for affirmative relief, and since Defendants have failed to plead or otherwise defend, a default judgment must be entered. Fed. R. Civ. P. 55(a). Defendants are not minors or incompetent persons. In fact, as an attorney licensed in the state of Illinois, Ira Nevel should know the consequences of failing to appear and file any pleadings. The decision to enter default lies within the district court's discretion. *Merrill Lynch Morgt. Corp. v. Narayan*, 908 F.2d 246, 250 (7th Cir.1990).

Judgment by default may be entered without a hearing on damages when “the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits.” *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir.1983).

Mrs. Fuentes requested in her Complaint statutory damages up to \$1,000 pursuant to 15 U.S.C. §1692k(a)(2)(A) and costs and attorneys fees pursuant to 15 U.S.C. §1692k(a)(3). The costs and attorneys fees in this case total \$2,046.50, representing \$350.00 in costs and \$1,696.50 in attorneys’ fees. (Exhibit 4).

CONCLUSION

WHEREFORE Plaintiff Irais Fuentes requests this Honorable Court to enter default judgment against Law Offices of Ira T. Nevel and Ira T. Nevel and an Order granting Plaintiff a judgment in the amount of \$2,046.50 for costs and attorneys’ fees and \$1,000 in statutory damages. In the alternative, Irais Fuentes requests this Honorable Court set a hearing date to determine the amount of damages.

Respectfully submitted,

s/ Laura K. Bautista
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Kelli Dudley

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Co-counsel for Plaintiff

CERTIFICATE OF MAILING

I, Laura K. Bautista, hereby certify that on May 19, 2008, a copy of this Motion and certificate were filed electronically using the Court's CM/ECF system, which automatically will send notice to those parties who have appeared and are so registered with a copy sent via Certified Mail, tracking number 7008 0500 0000 4542 7400, to the following:

Ira T. Nevel
Law Offices of Ira T. Nevel
175 North Franklin, Suite 201
Chicago, Illinois 60605

Respectfully submitted,

s/ Laura K. Bautista

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